



U.S. Department of the Interior
Bureau of Land Management

Module 2 – Lesson 1

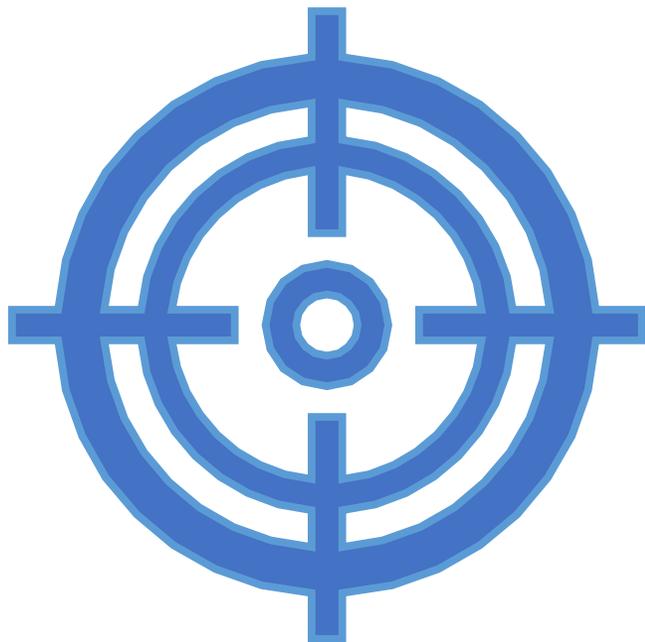
Conducting Initial Enforcement Actions





Lesson Objective

Now, each student should be able to...

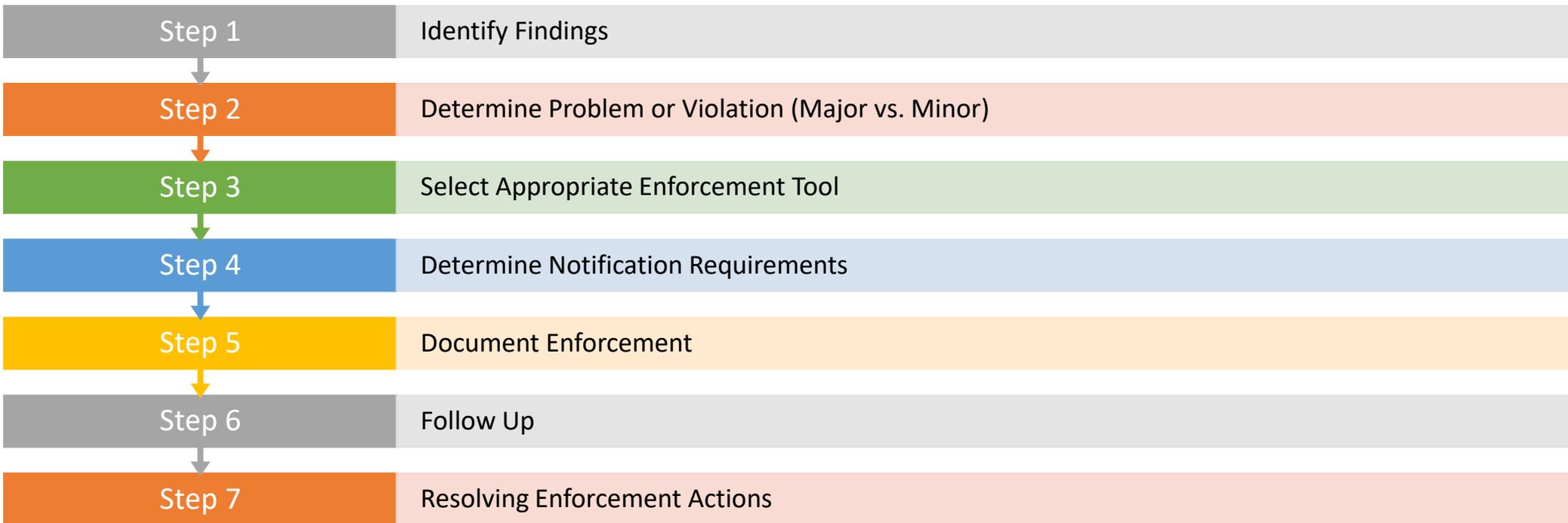


Given a compliance inspection with identified findings, determine if the findings are a problem or violation, select the appropriate enforcement action tool to address each finding, determine the notification procedures for each finding, document the enforcement action, and resolve enforcement actions based on regulatory and BLM policy guidance.



Lesson Route

Review the Initial Enforcement Action Process:







What are Findings?

- Findings are issues discovered during the environmental/surface inspection
- Findings may include:
 - Oversized well pad
 - Road located in the wrong location
 - Production facilities installed in places not consistent with approved diagrams
 - Spills, leaks, or malfunctioning equipment
 - Noxious weeds
 - Erosion
 - Insufficient revegetation in reclaimed areas
 - Dumping
 - Unpermitted surface disturbance

How are Findings Recorded?

- Findings are documented in the inspection form (Form 3160-33) and photographs
- Once identified and documented, determine if your findings are a PROBLEM or a VIOLATION





What is a Problem?

- A problem is a finding during your environmental/surface inspection that has not previously been addressed in the permit, sundry notice, or condition of approval, or other enforceable requirements.

What are Some Examples of Problems?

- Noxious weeds prevalent in reclaimed areas
- Contaminated soil found near production equipment
- Inadequate revegetation in reclaimed areas



Problem Examples:



Leaking Stuffing Box



Noxious weeds



What is a Violation?

- A violation is a finding that is in noncompliance with a specific regulatory authority (e.g., APD, COA, regulation, etc.).

What are Some Examples of Violations?

- Earthwork for final reclamation was not completed 6 months after the plug date of the well as required by Onshore Order No.1
- Production facilities painted a different color than the APD COAs
- An inadequate amount of topsoil was stockpiled as required by the surface use plan in the approved APD
- The well sign is missing the lease serial number as required by CFR's
- Operator fails to comply with a Written Order



Violation Examples:



Topsoil stockpiled is far less than what was required in APD COAs



Well sign without a lease number

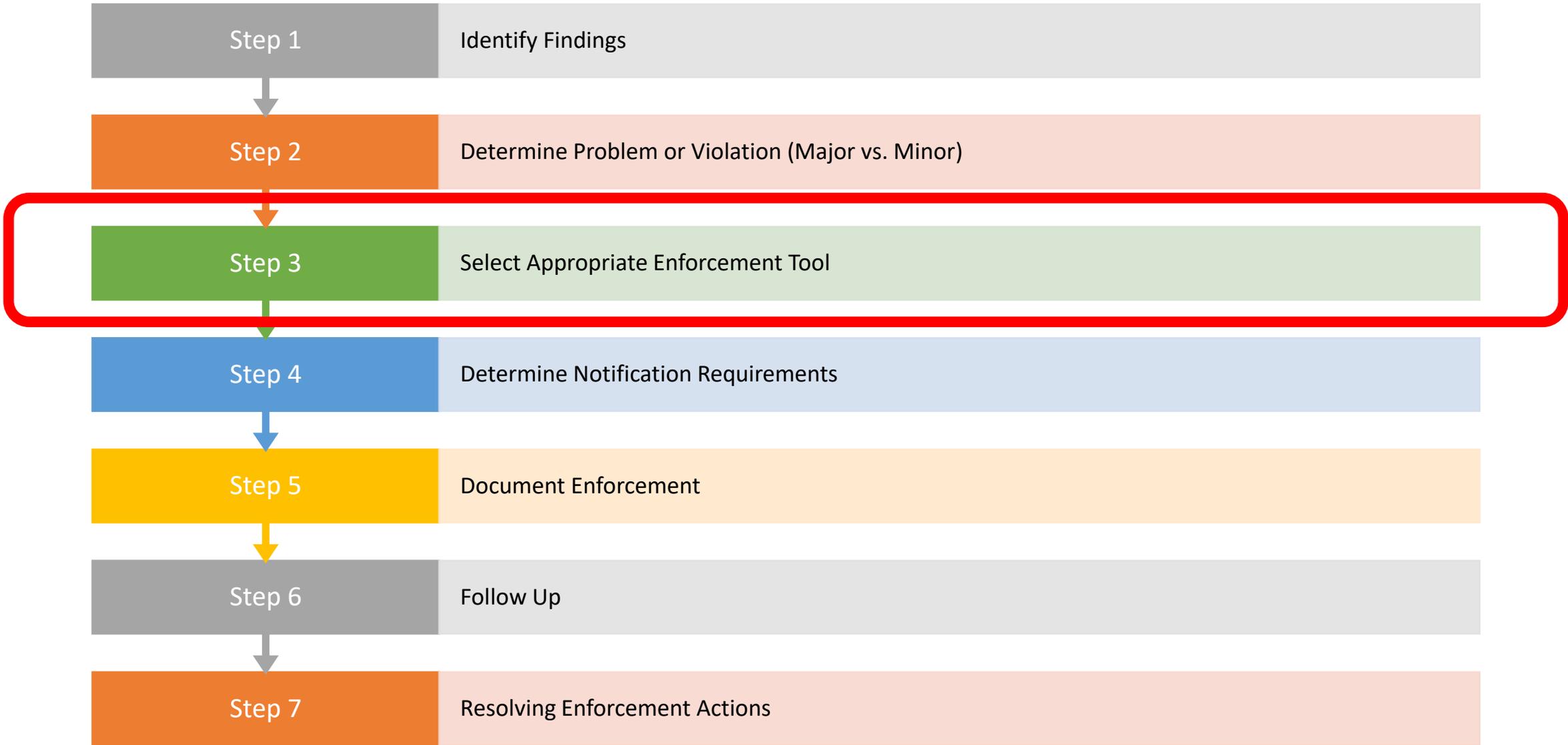


What is a Major Violation?

- A major violation is defined as a noncompliance that causes or threatens immediate, substantial, and adverse impacts to public health and safety, the environment, production accountability, or royalty income.

What is a Minor Violation?

- A minor violation is defined as a noncompliance that does not rise to the level of a major violation.
 - *Almost all violations involving findings found during the environmental/surface inspections fall under minor violations.*





There are 9 different enforcement action tools that surface inspectors can use to gain compliance?

1. Orders of the Authorized Officer
2. Incidents of Noncompliance
3. Immediate Assessment
4. Monetary Assessment
5. Shut Down Order
6. Forfeiture of Bond
7. Work Completed at the Expense/Risk of Operator
8. Cancellation of Lease
9. Civil Penalties

** Tools numbered 3-9 will be covered in Module 2 Lesson 2



What are the two common initial enforcement action tools an oil and gas inspector can utilize?

- Order of the Authorized Officer (Written Order)
- Incidents of Noncompliance (INC)

When are these two enforcement action tools used?

Initial Enforcement Action Tool	Problem or Violation Identified
Written Order	Problem
INC	Violation



What is a Written Order?

- Formal directions or instructions from the Authorized Officer to a Federal oil and gas lease operator (*not previously given to the operator in the approved permit or in other enforceable requirements*) to correct a problem.



**Written Orders do not impact an operator's record.*



What regulations require operators to comply with a Written Order?

- 43 CFR 3162.1(a) - “The operating rights owner or operator... shall comply with... orders and instructions of the authorized officer.”





What is an INC?

- Formal notification from the Authorized Officer to the operator that their operations are not in compliance with a specific requirement provided in one or more of the six requirements an operator must comply with:
 - 1. Regulation**
 - 2. Notices to Lessees (NTL)**
 - 3. Onshore Oil and Gas Orders**
 - 4. Lease Terms and Stipulations**
 - 5. Approved Permits (e.g., APD and Sundry Notices) and Conditions of Approval (COAs)**
 - 6. Orders of the Authorized Officer**

**The gravity and number of INCs may impact an operator's record or impact the bonding (WO IM-2019-014).*



What regulations relate to INC's?

- 43 CFR 3163.1(a) - “Whenever any person fails or refuses to comply with the regulations in [43 CFR 3160], the terms of any lease or permit, or the requirements of any notice or order, the Authorized Officer shall notify that person in writing of the violation or default.”





If the inspector finds a PROBLEM during an inspection, what enforcement action tool is used?

- Written Order

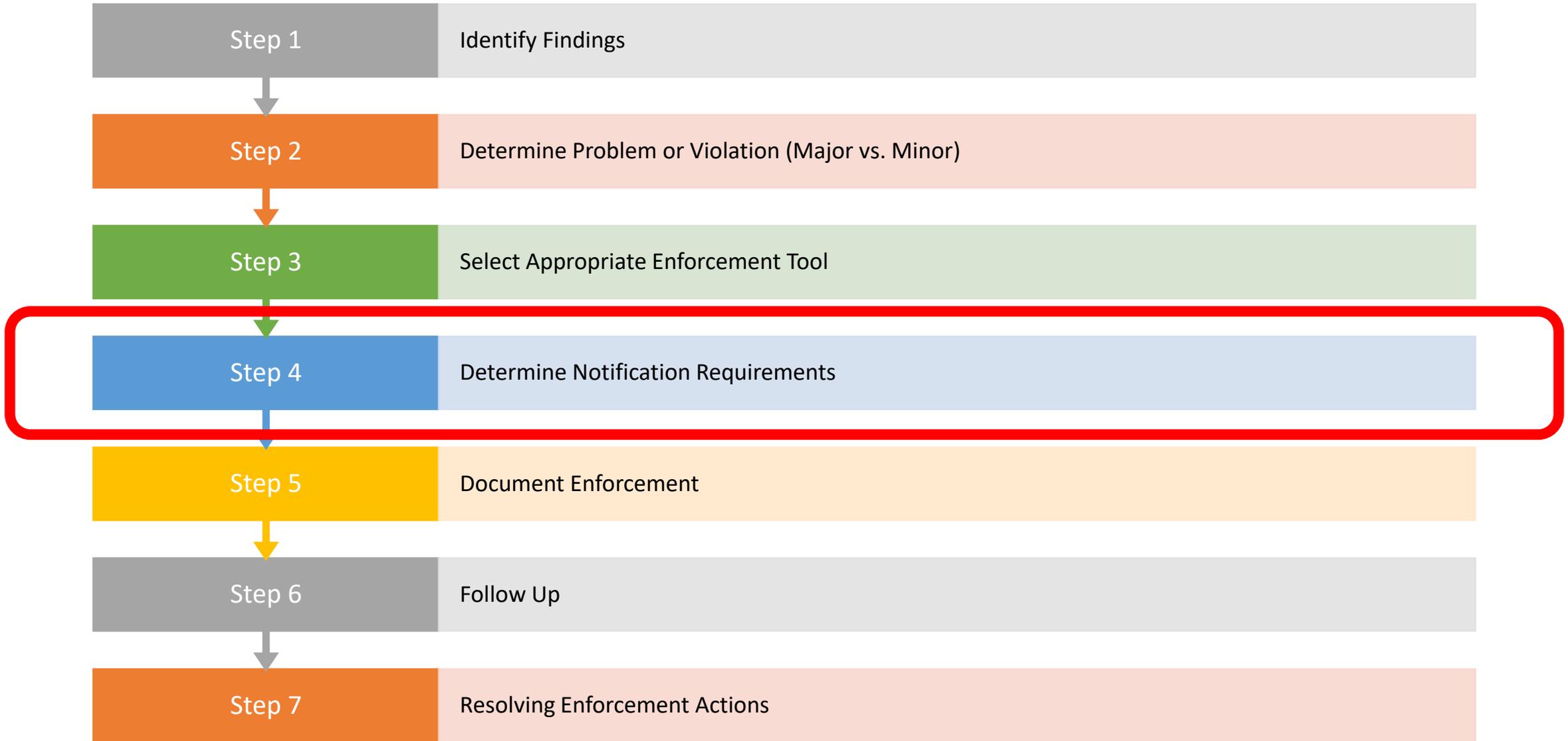
If the inspector finds a VIOLATION during an inspection, what enforcement action tool is commonly used?

- INC



What are the most common authority references for problems and violations?

Problem or Violation	Finding Examples	Authority Reference
Problem	<p>Problems not covered in a specific permit or regulatory requirement like:</p> <ul style="list-style-type: none"> • Weeds; • Erosion; • Missing Wildlife Protections; • Inadequate Secondary Containment 	43 CFR 3162.5-1(a) - The operator shall conduct operations in a manner which protects the mineral resources, other natural resources, and environmental quality.
Problem	<p>Problems not covered in a specific requirement in the reclamation plan like:</p> <ul style="list-style-type: none"> • Inadequate revegetation, etc. 	43 CFR 3162.5-1(b) - ...Upon the conclusion of operations, the operator shall reclaim the disturbed surface in a manner approved or reasonably prescribed by the authorized officer.
Problem	<p>Inspector discovers:</p> <ul style="list-style-type: none"> • Contaminated soil; • Active spill or leak 	43 CFR 3162.5-1(c) - ...The operator shall exercise due diligence in taking necessary measures, subject to approval by the authorized officer, to control and remove pollutants and to extinguish fires...
Violation	<p>Operator does not comply with specific:</p> <ul style="list-style-type: none"> • Written Order requirements • Approved aspects of the APD or COAs • Approved aspects of the Sundry Notice (NOI) or COAs • Lease stipulations 	43 CFR 3162.5-1(a) – ...In that respect, the operator shall comply with the pertinent orders of the authorized officer and other standards and procedures as set forth in the applicable laws, regulations, lease terms and conditions, and the approved drilling plan or subsequent operations plan...
Violation	<p>Operator does not comply with a specific requirement in:</p> <ul style="list-style-type: none"> • Regulation • NTL • Onshore Order 	Cite the specific regulation (e.g., NTL-3A, Section II)





What method of notification must the inspector utilize to inform the operator of a PROBLEM or VIOLATION?*

➤ **AFMSS-Generated Form:**

- Form 3160-18 (Written Order)
- Form 3160-9 (INC)

Remember:

- One problem per WO
- One violation per INC

When can the inspector utilize the letter format to notify an entity about a problem or violation?

➤ **Only method authorized to notify non-operators**

- *i.e., purchasers, transporters, contractors, operating rights owners, Lessees of Record Title, etc.*

➤ **Written Order or INC must still be recorded in AFMSS within five (5) working days**

➤ **Instructions for letter format in H-3160-5, Section VII**



The INC, Form 3160-9, and Written Order, Form 3160-18, as appropriate, are the only methods authorized to notify operators of a violation, issue, or problem found during the following inspection types and associated activities, or a violation of regulation (43 CFR Parts 3160 and 3170), Onshore Oil and Gas Order (OOGO), or Notice to Lessee (NTL):

- **Environmental/Surface Inspection (post-approval);**
- **Undesirable Event;**
- **Failure to comply with an INC (Form 3160-9) or Order (Form 3160-18 or letter);**
- **Failure to obtain prior approval, or other violation of regulation, OOGO, or NTL;**
- **Etc.**



What other method of notification must the inspector utilize to inform the operator of a major violation?

- **A good faith effort must be made to contact such designated representative by telephone and must be followed by a written notice (INC)**
 - A complete conversation record must be recorded in the official well file documentation





What method of notification is no longer allowed?

➤ Verbal Warnings

- FY2021 Strategy IM-2021-006 removed this notification from policy
- Verbal Warnings of any violation are not allowed

What are Oral Orders?

➤ **Certified inspectors delegated authority may issue oral orders**

- Written Orders must follow oral orders within 5 working days
- Oral Orders are not Verbal Warnings
- Information on Oral Orders are found in 43 CFR 3161.2 and H-3160-5 Pages VI-7 and VI-8



What is required to be recorded in AFMSS for a Written Order/INC?

- **Unique Number (automatically generated)**
- **Delivery Method**
- **Inspector Name**
- **Specific Enforcement Action Tool (Written Order or INC)**
- **Date/Time Problem or Violation was Identified**
- **Effective Date of Enforcement Action**
- **Authority Reference**
- **Inspection Activity Code**
- **Enforcement Action Description**
- **Category of Enforcement Action**
- **Gravity of Violation (if INC)**
- **Abatement Date**
- **Remarks for Form:**
 - **Specific Problem or Violation**
 - **Corrective Actions**



What does the unique enforcement action number* stand for?

2-Digit Fiscal Year:
21 for FY2021

21JES0001W

1-Letter for Type:
W = Written Order
I = INC
S = Shut Down of Operations
V = Verbal Warnings
A = Assessment
C = Civil Penalty

3-Letter Initial for Inspector Name:
JES for John Edward Smith

4-Digit Sequential Number:
0001 for first enforcement action in this fiscal year

*unique # is autogenerated in AFMSS2



What are two methods of delivery for a Written Order or INC?

Certified Mail – Return Receipt Requested



- Record number in AFMSS and on enforcement action
- Attach CM Receipt and returned Green Card to BLM copy of the Written Order or INC in the official well file

Hand-Delivered

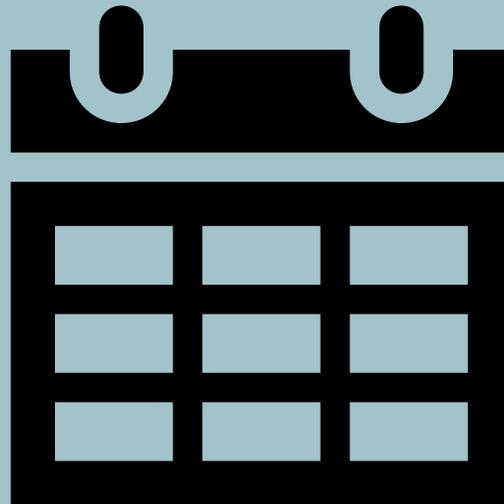


- Record name of person it was hand-delivered to in AFMSS and on the BLM copy of the Written Order or INC in official well file
- Ensure that a “received by” signature is obtained
 - If operator refuses to sign, record time and date delivered



What is the effective date for a Written Order or INC?

- **Date operator receives the actual notice, which is either:**
 - 7 business days after the Written Order/INC will be mailed
 - Date the operator receives notice (if hand-delivered)





What should the inspector know about inputting an appropriate authority reference?

- **The authority reference shall be as specific to the nature of the problem or violation as possible.**
- **In most cases, only one authority reference shall be used per Written Order/INC**
- **Cite the specific regulation, NTL, or Oil and Gas Onshore Order which relates most to the problem or violation**
 - **The specific COA, permit requirement, or lease stipulation can be referenced in the text of the INC**
- **DO NOT cite BLM policy or guidance (i.e., BLM Gold Book, IM's, handbooks)**

How does the inspector cite the authority reference?

- **Cite the most specific regulation in its entirety**
 - Example: Onshore Oil and Gas Order No. 1, XII.B.
 - Example: 43 CFR 3162.5-1(a)





What is an appropriate abatement date for a Written Order/INC?

➤ **Written Order**

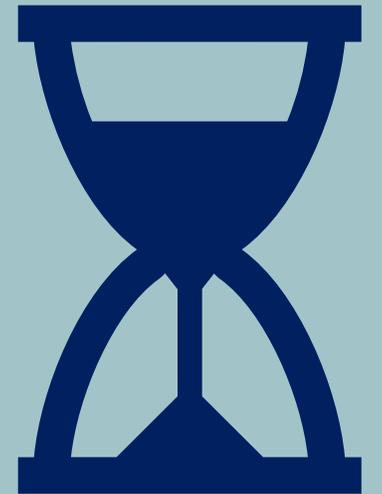
- A reasonable deadline to correct the specific problem
- Use common sense and reasonableness
- Consider time of year and other circumstances

➤ **Minor Violation**

- Minimum - 20 days

➤ **Major Violation**

- Depends on the threat to health or environment





What should the inspector type into the body of the Written Order or INC?

➤ **Specific Problem or Violation**

- Clearly and concisely describe the specific problem or violation
- Do not include information not pertinent to the problem/violation
 - WO Example: A large erosional head-cut was discovered on the northeast corner of the well site, which is leading to soil loss.
 - INC Example: The well sign is missing a lease number as required by 43 CFR 3162.6.

➤ **Corrective Actions**

- Try to use performance objectives rather than specifically describing exact work to be done.
 - WO Example: No later than July 7, 2020, take appropriate remedial measures to stabilize the head-cut and restore perennial vegetation. Eliminate the source of the problem by diverting and/or slowing water flow from the well pad.
 - INC Example: No later than March 29, 2020, correct the well sign to include a legible lease number.



What is a good example of a problem description and corrective action?

➤ **Written Order:**

Problem: The 400-barrel produced water tank on the southwest corner of the well site is lacking a sufficient secondary containment structure in case of an unexpected spill. During an inspection on March 2, 2020, the BLM inspector measured and calculated the secondary containment structure around the tank to hold approximately 60% of the volume of the 400-barrel tank.

Corrective Action: No later than May 1, 2020, take appropriate measures to install or reconstruct the secondary containment structure around the 400-barrel produced water tank to be sized to hold the volume of the 400-barrel tank and sufficient freeboard for precipitation. If you have any questions, call John Smith at 970-904-9780.

Note: There was no APD COA for a secondary containment for this older well's tank.



What is a good example of a violation description and corrective action?

➤ **INC:**

Violation: During a BLM inspection conducted on November 16, 2019, the inspector discovered that the above-ground structures on the well site were painted a tan color. The well was completed for production on October 1, 2018. The APD Conditions of Approval state, “All permanent above-ground structures on the well site must be painted a Juniper Green color from the BLM color chart, except for coloration required by OSHA safety requirements.” Therefore, the operator has failed to comply with a specific APD COA.

Corrective Action: No later than May 1, 2020, take appropriate measures to paint all above-ground structures on the well site in accordance with the APD COA’s. A BLM color chart is available for use at the BLM Tres Rios Field Office. If you have any questions, call John Smith at 970-904-9780.

Note: Painting is not ideal during the winter, so abatement date is in warmer weather.



Who has authority to sign the Written Order or INC?

- **Certified inspectors delegated authority to issue Written Orders or INCs must sign and enter the date and time of the signature to validate the notice of violation.**
- **Managers (AO) can sign the letters issued to non-operators.**
- **Reference your state's Manual 1203 – Delegation of Authority**





What can be attached to the Written Order or INC?

- **Photographs of the Problem or Violation**
- **Photographs must be identified with:**
 - Date of photo
 - Time of photo
 - Lease number
 - Operator
 - Location
 - Brief description of the violation or problem

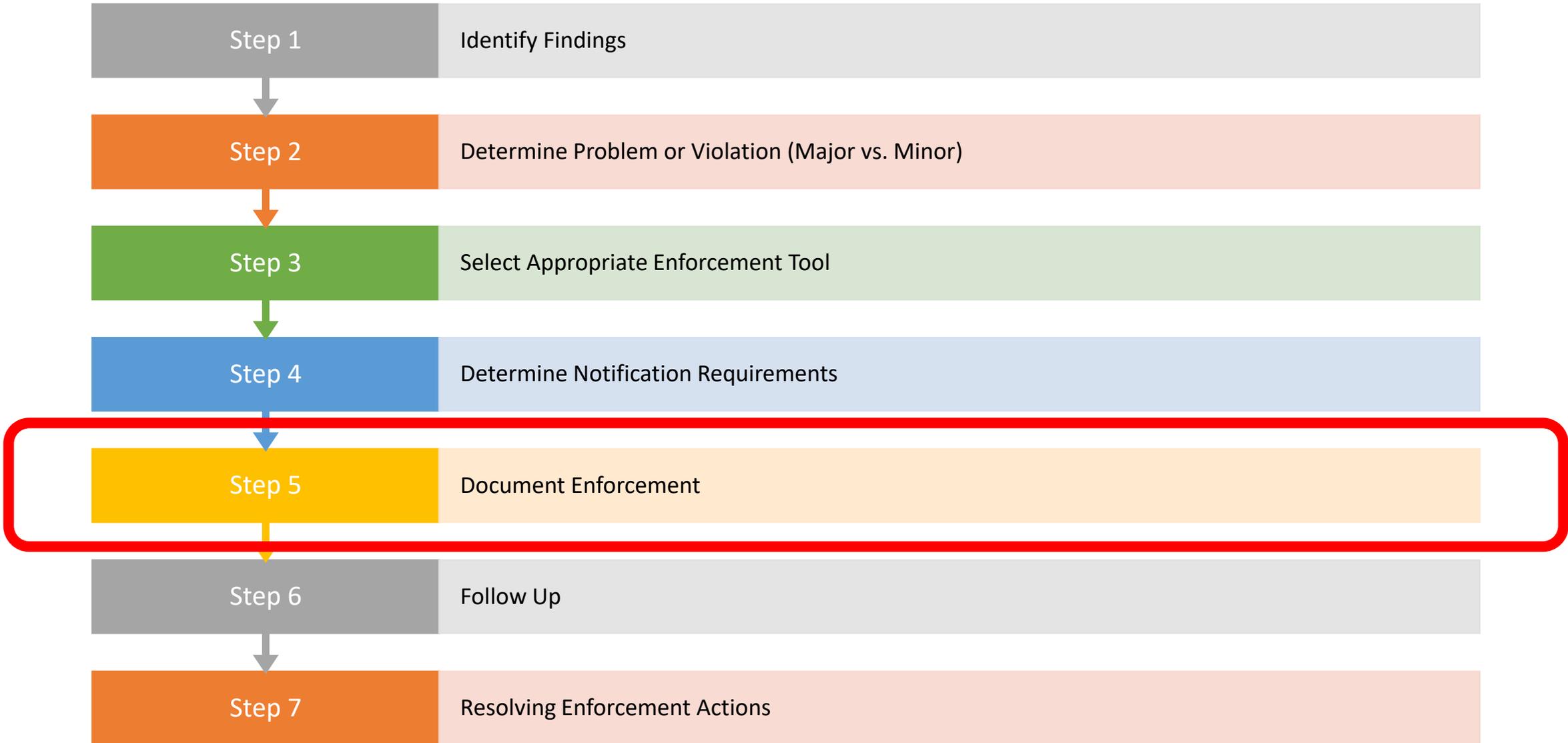
Lease: COC68761

Operator: BP America Production Co.

Location: NENE, Sec. 6, T. 34 N. , R. 8 W.



Uncovered well cellar with fluids posing a danger to avian entry and mortality.





How many copies should be made for a Written Order or INC?

- **The original and a copy of the Written Order or INC are given or mailed to the operator.**
 - The original copy is for the operator to sign and return to BLM
 - The other copy is for the operator's records

- **Maintain a copy in the official well file**
 - Attach the Certified Mail Receipt and returned Green Card
 - If hand-delivered, have operator representative sign and record the date and time
 - Record the date and time yourself if operator refuses





When is a follow-up inspection required for a Written Order/INC?

- **Major Violations**
- **If operator fails to self-certify the minor violation or problem's correction**
- **Situational for Written Orders (i.e., irresponsible vs responsible operator)**

Why is follow up important for enforcement actions?

- **Critical for the success of future enforcement actions**
- **Ensure corrective actions were completed adequately**

When should the follow-up inspection occur?

- **Soon after the abatement date**



How many extensions can an inspector grant for a Written Order or INC?

- **The Authorized Officer may grant 3 extensions**
- **Extension must be request prior to abatement date**
- **Each must be recorded in AFMSS**
- **H-3160-5 p. VI-28**

How should the operator request an extension to the abatement date?

- **Sundry Notice – Notice of Intent (recommended)**
 - **Provides a mechanism to approve/deny request**
 - **Sundry Notice should include:**
 - *Operator's proposed abatement date*
 - *Adequate rationale for the extension request*



If the operator doesn't comply with your written order, what is the process for elevating your enforcement action?

- **You will resolve the Written Order (21JS0001W) noting noncompliance, and elevate to INC.**
 - Simplified:
Violation: Not complying with the Written Order No. 21JS0001W.
Corrective Action: Comply with the Written Order. No. 21JS0001W.
- **Last letter in unique # will change to an “I” - (e.g., 21JES0001I)**

21JES0001W



21JES0001I

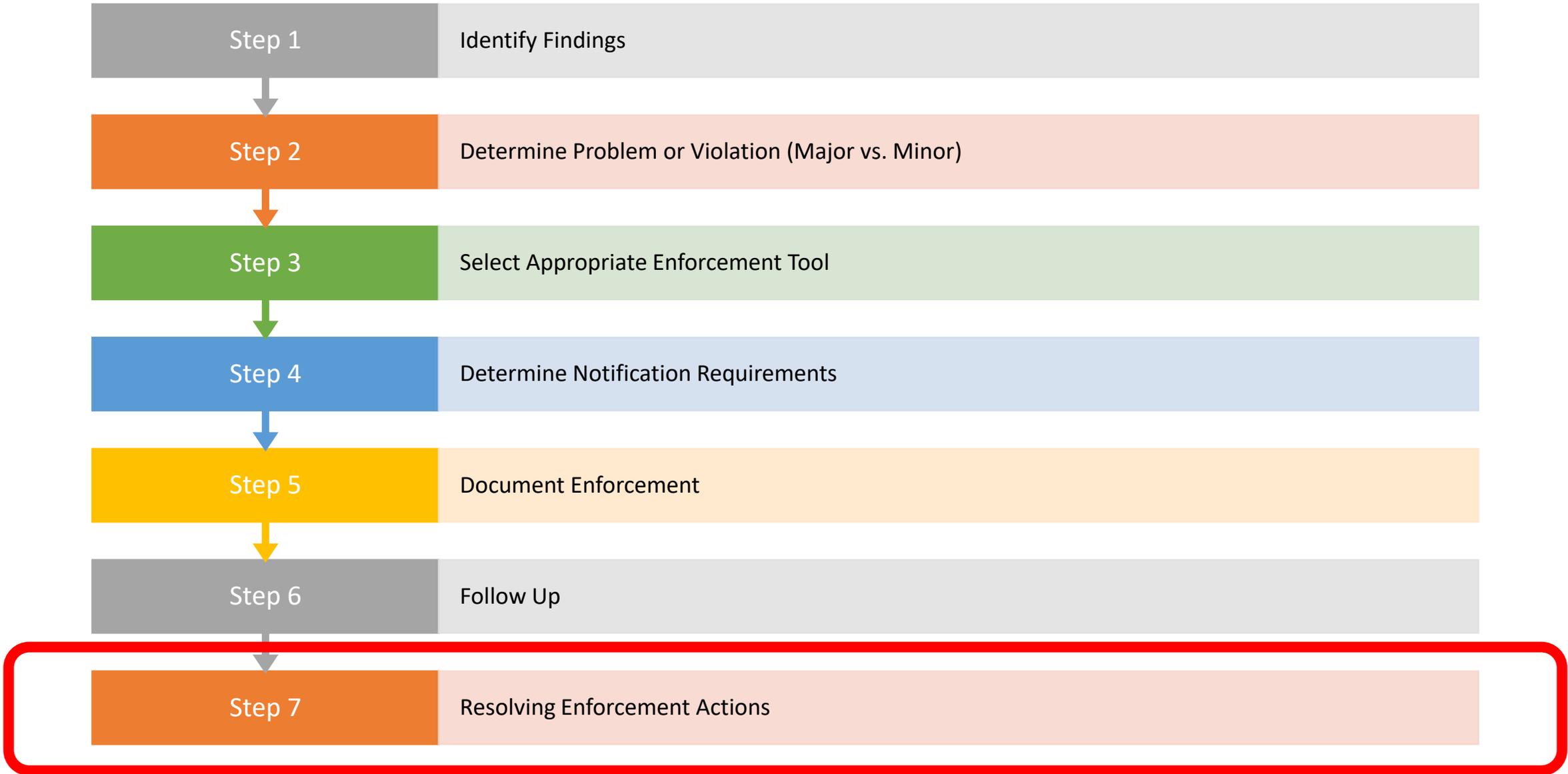


When does an enforcement action get rescinded?

- **Technical or procedural errors (see H-3160-5, VI.G.)**
 - Any INCs issued by the Authorized Officer/Certified Inspector in accordance with applicable regulations or policy and which do not contain any discrepancies (i.e., incorrect operator, case, well, etc.) cannot be rescinded without review by the Deputy State Director.

- **Rescind enforcement action in AFMSS**
 - Click “Rescinded” toggle button in “Resolution” tab
 - ***Enter rescinded date***
 - ***Enter rationale for rescinding enforcement***
 - An “R” will now appear at the end of the unique enforcement action number

- **Notify the operator of rescinded enforcement action.**





What does the operator submit once the corrective actions are completed for the Written Order or INC?

➤ **Self-Certified Form**

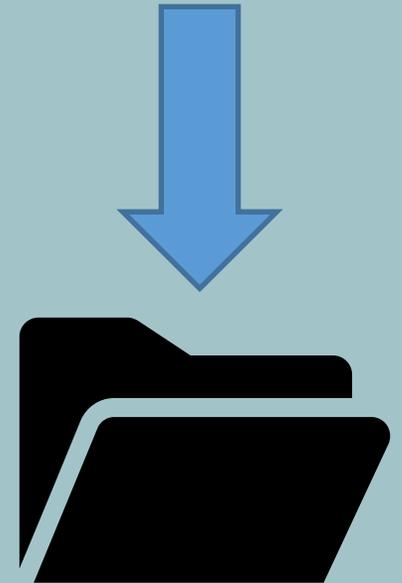
- **Form 3160-9 or Form 3160-18**
 - Operator signs form and includes date of signature
 - Operator enters date corrective actions were completed
 - Operator includes a description of how the corrective actions were completed
- **Self-Certification Form provided by BLM (letter format)**





What actions does the inspector perform once corrective actions are deemed corrected by follow-up inspection and/or self-certification?

- **Resolve the enforcement action in AFMSS**
 - Include date corrective actions were completed
 - Include in the remarks how the inspector determined corrective actions were completed
- **File follow-up inspection and/or self-certification form in the official well file**



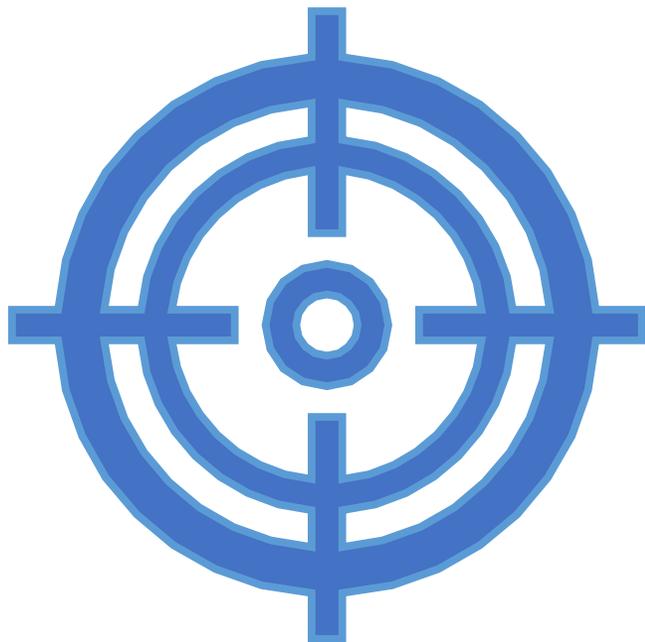
A large, orange, rounded rectangular box with a slight 3D effect, containing the word "CONCLUSION" in white, bold, sans-serif capital letters. The box is centered horizontally and vertically in the lower half of the image.

CONCLUSION



Lesson Objective

Now, each student should be able to...

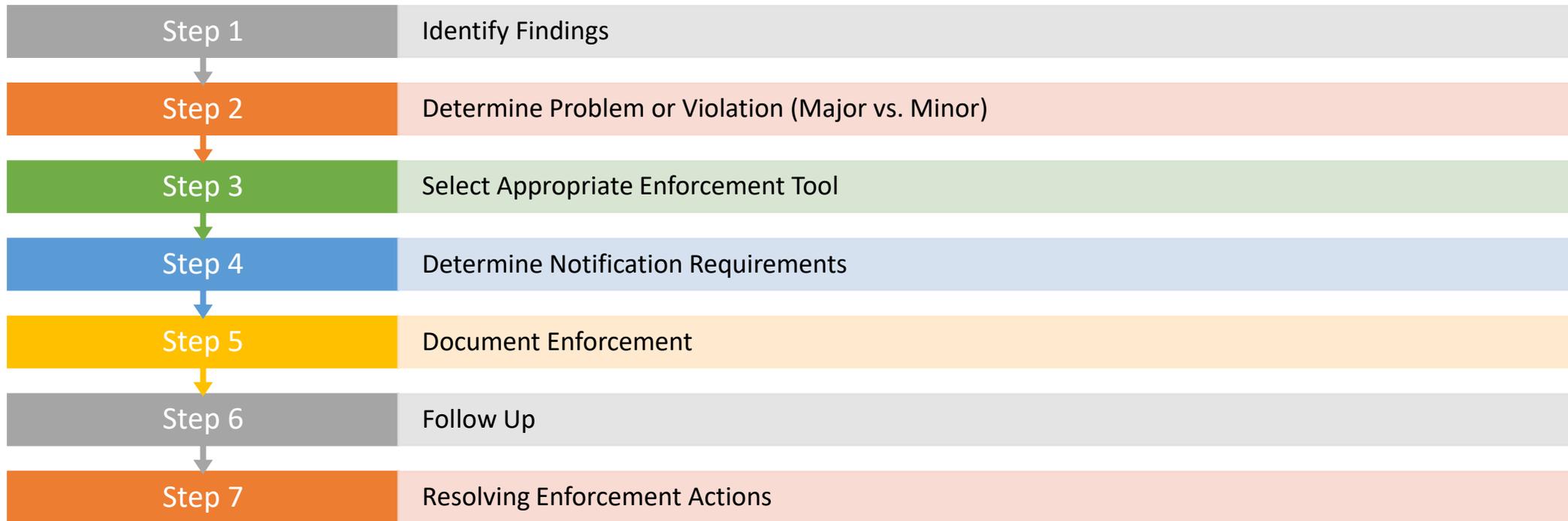


Given a compliance inspection with identified findings, determine if the findings are a problem or violation, select the appropriate enforcement action tool to address each finding, determine the notification procedures for each finding, document the enforcement action, and resolve enforcement actions based on regulatory and BLM policy guidance.



Lesson Route

We reviewed the initial enforcement action process:





U.S. Department of the Interior
Bureau of Land Management

Module 2 – Lesson 1

Conducting Initial Enforcement Actions

A photograph of two workers in hard hats and safety gear standing at a water control facility. They are positioned behind a fence that separates them from a complex network of large, white metal pipes and valves. In the background, a dark pickup truck is parked on a gravel area. The scene is set against a backdrop of a hilly, arid landscape under a clear sky.

END